

From: Lenore Horner
To: Microsoft ATR
Date: 1/26/02 4:17pm
Subject: Microsoft Settlement

The proposed Microsoft settlement doesn't make sense to me for a number of reasons.

It proposes "punishing" Microsoft by letting it get its foot in the door through donated software.

It doesn't seem to properly regulate the problematic behaviors. Consider for example the summary points below.

per <http://www.kegel.com/remedy/remedy2.html#abe>

- > Section III.A.2. allows Microsoft to retaliate against any OEM that
- > ships
- > Personal Computers containing a competing Operating System but no
- > Microsoft operating system.
- > Section III.B. requires Microsoft to license Windows on uniform terms
- > and at published prices to the top 20 OEMs, but says nothing about
- > smaller OEMs.
- > This leaves Microsoft free to retaliate against smaller OEMs, including
- > important regional 'white box' OEMs, if they offer competing products.
- > Section III.B. also allows Microsoft to offer unspecified Market
- > Development Allowances --
- > in effect, discounts -- to OEMs. For instance, Microsoft could offer
- > discounts on Windows to OEMs based on the number of copies of Microsoft
- > Office or Pocket PC systems sold by that OEM. In effect, this allows
- > Microsoft to leverage its monopoly on Intel-compatible operating systems
- > to increase its market share in other areas, such as office software or
- > ARM-compatible operating systems.

One of Microsoft's more reprehensible modes of operation is that of bully: sell my stuff, my way and only my way or I'll put you out of business. The settlement fails to fully and uniformly protect companies from Microsoft's tactics. Why is it acceptable for Microsoft to use pressure tactics on little guys just because they're not top 20?

The permission of Microsoft to continue its current licensing practice of charging on the basis of potential machines using the software rather than actual machines using the software is permission to charge for non-existent services. This is something that should be explicitly prohibited for all companies. One does not after all go to the store and buy as much juice as biologists have determined the people in your household could conceivably drink in some set period of time, rather one buys the amount one expects to use and buys more if more is needed. The argument that software can be pirated won't wash since one is presumed

innocent until proven guilty. The present Microsoft practice not only presumes guilt but does not even admit of a procedure for proving innocence.

Lastly, given Microsoft's past history, it is imperative that the settlement have clear and potent means of enforcement embodied in the agreement as opposed to mere investigative powers.

thanks for "listening"
Lenore Horner